

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CLIFFORD F. TUTTLE, JR., et al.

§

Consolidated with

§

JOHN NICHOLAS, et al.

§

Plaintiffs,

§

CASE NO. 4:21-CV-00270

v.

§

CITY OF HOUSTON, et al.

§

Defendants.

§

**FELIPE GALLEGOS's PARTIALLY UNOPPOSED MOTION FOR STAY PENDING  
APPEAL TO THE FIFTH CIRCUIT COURT OF APPEALS**

Defendant Officer Felipe Gallegos files this partially unopposed motion for a stay of proceedings in this Court pending Gallegos's appeal of this Court's summary judgment ruling to the Fifth Circuit. *See* [Dkt. 440]. In support of this motion, Mr. Gallegos would show as follows:

On April 15, 2025, Defendant Felipe Gallegos timely filed a notice of appeal of this Court's Order denying Gallegos's motion for summary judgment on, among other things, Gallegos's defense of qualified immunity. *See* [Dkts. 440, 438]. Officer Gallegos filed this interlocutory appeal under the collateral order doctrine pursuant to *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

In *Mitchell*, the Supreme Court held that “[b]ecause immunity is effectively lost if a case is erroneously permitted to go to trial, a denial of qualified immunity may be immediately appealed.” *See id.* at 526-27 (cleaned up). In addition, “[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district of its control over those aspects of the case involved in the appeal.” *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

Thus Mr. Gallegos seeks a stay of all proceedings in this Court related to those aspects of the case which are currently on appeal, *ie.*, the claims against Gallegos and his defense of qualified immunity. This would include a continuance of the current trial setting, which is scheduled for docket call on May 2, 2025, with a jury trial beginning on May 5, 2025.

All parties have indicated that they are unopposed to a stay to the extent it continues the current May trial setting to a date after proceedings related to Mr. Gallegos's appeal have concluded. In response to a request to confer, counsel for the plaintiff's indicated, however, that the plaintiffs "would oppose a motion to completely stay the case."

To the extent there may be matters related to the case that do not implicate aspects of the case involved in Mr. Gallegos's appeal, Mr. Gallegos also would not oppose the Court continuing to exercise jurisdiction over such matters—though Mr. Gallegos notes that discovery in the case has concluded, so the scope of matters unrelated to Mr. Gallegos's appeal would appear to be narrow.

*[Conclusion and signatures on following page . . .]*

## **CONCLUSION**

For the foregoing reasons, Felipe Gallegos respectfully requests that the Court stay all aspects of the case relating to Mr. Gallegos's appeal and continue the current trial setting to a date to be determined after proceedings related to Mr. Gallegos's appeal conclude.

Dated: April 22, 2025

Respectfully submitted,

/s/ Russell Hardin, Jr.

Russell Hardin, Jr.

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### ***ATTORNEYS FOR DEFENDANT***

### ***FELIPE GALLEGOS***

## **CERTIFICATE OF CONFERENCE**

I conferred with all parties regarding the forgoing motion. All parties were unopposed to the motion to the extent it continued the May 2025 trial setting. Counsel for Plaintiffs noted, however, that the Plaintiffs "oppose a motion to completely stay the case."

/s/ John MacVane

John MacVane

**CERTIFICATE OF SERVICE**

I hereby certify that on April 22, 2025, a true and correct copy of the foregoing was delivered to all parties through their counsel(s) of record, in accordance with the Rules, via email or CM/ECF to the following:

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*/s/ John MacVane*  
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